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IN THE

# Supreme Court of the United States

October Term, 1984

No. ———

Briggs Transportation Company,

*Petitioner,*

vs.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al.,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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## QUESTIONS PRESENTED FOR REVIEW

Whether a bankruptcy court, which has issued an order approving rejection of a collective bargaining agreement, has authority under the Bankruptcy Code to enjoin labor union activity which directly interferes with the debtor's business operations and which has been undertaken to nullify the bankruptcy court's prior order.

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Briggs Transportation Company,

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International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and all of its affiliated unions; Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent); International Association of Machinists and Aerospace Workers, AFL-CIO and all its local unions; and Local Union No. 710 (Chicago) affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

*Respondents.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Briggs Transportation Company ("Briggs") petitions for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit to review a judgment of that court filed July 17, 1984 which affirmed the district court's refusal to enjoin certain activities engaged in by Briggs' union employees and their elected representatives.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit affirming the order of the district court (Appendix A) is not yet officially reported. The order of the district court entered on April 25, 1984 which denied Briggs' petition for injunctive relief (Appendix B) is not yet officially reported.

## JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was filed on July 17, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## STATUTES INVOLVED

The questions addressed in this Petition involve the following statutory provisions:

11 U.S.C. § 105

*Power of court.*

(a) The bankruptcy court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

(b) Notwithstanding subsection (a) of this section, a bankruptcy court may not appoint a receiver in a case under this title.

29 U.S.C. §101

*Issuance of restraining orders and injunctions; limitation; public policy.*

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in

a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

## STATEMENT

Petitioner Briggs,[1] a trucking company, filed a petition in bankruptcy on January 25, 1983. Under the petition submitted pursuant to Chapter 11 to Title 11 of the United States Code, Briggs operates its business as a debtor-in-possession. Respondents are various labor unions which represent approximately 300 of Briggs' 400 employees.

Following the filing of its petition, Briggs took specific action to reduce operating costs including restructuring its debt, moving to less expensive terminal space, subletting excess terminal capacity, and reducing staff. Action was also taken to reduce Briggs' largest expense, its labor cost. In this regard, Briggs attempted to initiate negotiations with the unions to revise the collective bargaining agreements then in effect. Once that effort proved fruitless, Briggs petitioned the bankruptcy court for an order authorizing a rejection of those collective bargaining agreements. Premised upon this Court's decision in *Bildisco and Bildisco v. NLRB*, —— U.S. ——, 104 S. Ct. 1188, 79 L.Ed 2d 482 (1984), the bankruptcy court on March 30, 1984 issued a thirty-two page decision and granted the order requested by Briggs.

Immediately following issuance of the March 30, 1984 bankruptcy court order, Briggs notified its employees and its unions of its intention to institute new wages, benefits

[1]Briggs, as a corporation, has no affiliation with any other corporate entity.

and work rules effective April 1, 1984. In reaction to this announcement, the unions took strike action four days later, setting up picket lines at most of the Briggs terminals.

In hopes of warding off the adverse consequences the unions' actions would have upon Briggs' continued viability, the announced changes in wage benefits and proposed rules changes were postponed and Briggs requested a meeting with the unions to discuss its situation. A meeting between Briggs and the International Brotherhood of Teamsters ("IBT") negotiating committee was held on April 12, 1984. At that meeting, the IBT simply proposed the *same wage and fringe benefit package* as previously contained in the rescinded contract. In addition, the IBT refused to agree to any changes in work rules.

Faced with a tenuous financial situation which made further delay intolerable, Briggs instituted its initial proposal to reduce wages, fringe benefits and less burdensome work rules. Recognizing Briggs' vulnerable financial position, the unions went on strike. The union also took specific actions intended to disrupt Briggs' business operations, by setting up picket lines on Briggs' property and by encouraging harassment of Briggs' non-striking employees.

On April 20, 1984, Briggs brought suit in federal district court seeking injunctive relief to prevent the union's deliberate interference with Briggs' normal business operations. Specifically, Briggs requested that all harassment actions be barred and that a certain distance should be set from Briggs' premises at which picketing could take place thus allowing Briggs' operations to continue unhindered. Jurisdiction of the court was premised upon 28 U.S.C. §1334. Following a hearing on April 24, 1984, the dis-

trict court denied Briggs' petition and found that the Norris-LaGuardia Act specifically barred it from issuing any injunctive relief. The district court's analysis focused principally upon whether the unions' activities grew out of a "labor dispute" as defined in the Norris-LaGuardia Act, 29 U.S.C. §113(c). Finding that the union activities were covered by the Norris-LaGuardia Act, the lower court concluded that the procedural requirements set forth in that Act must be complied with prior to issuance of an injunction.

The district court failed to consider seriously Briggs' contention that, consistent with this Court's findings in the *Bildisco* case, the competing policies of the Bankruptcy Code and the Norris-LaGuardia Act should be balanced in resolving whether injunctive relief should be issued The district court stated:

> *Bildisco* involved a relatively narrow issue and an interpretation of an entirely different statute (the National Labor Relations Act) than the present action. The Supreme Court in *Bildisco* never even referred to the Norris-LaGuardia Act . . . . The appropriate balance between the competing policies of the Bankruptcy Code and the Norris-LaGuardia Act was struck by Congress when it enacted the Norris-LaGuardia Act and this court is in no position to change that result.

(Appendix B at 12-13).

An appeal of that order was then taken to the United States Court of Appeals for the Eighth Circuit, which affirmed the district court's decision on July 12, 1984. The appellate court concluded there was ". . . nothing in the Bankruptcy Code or its legislative history indicating a con-

gressional intent to lift the jurisdictional restrictions of the Norris-LaGuardia Act." (Appendix A at 6). The court of appeals found significant the absence of any discussion of the Norris-LaGuardia Act by this Court in the *Bildisco* decision. The appellate court concluded that no implication was contained in the *Bildisco* decision suggesting that the anti-injunction provision of the Norris-LaGuardia Act should be repealed in cases such as the present one.

## REASONS FOR GRANTING THE WRIT

This petition presents for review the question of whether a bankruptcy court, which has authority to approve cancellation of a debtor's collective bargaining agreements, has any authority to enforce an order granting approval. The holding of the appellate court that no equitable remedy exists to enforce such an order directly conflicts with this Court's previous decision in *Bildisco and Bildisco v. NLRB, supra.* As such, this petition presents an important federal question for review which is properly before this Court pursuant to Rule 17(c) of this Court's Rules.

In framing the question presented in this petition, it is important to emphasize what is not at issue here. The issue here is not whether employees, unhappy with the bargaining contract rescission order, should be prevented from striking or picketing. The issue here is not whether a bankruptcy court's discretion in framing appropriate equitable relief might to some extent be limited due to a balancing of the policies underlying the bankruptcy and labor laws. Rather, the issue is whether in a Chapter 11 proceeding, a bankruptcy court can go only so far as to approve rejection of a collective bargaining contract agreement *and no further.*

In *Bildisco,* the issue affirmatively resolved by this Court was whether a court in a bankruptcy case may approve rejection of a collective bargaining agreement. In this case the issue presented is whether in taking that action a bankruptcy court is engaging in a hollow exercise.

The appellate court's decision in this case conflicts with this Court's *Bildisco* decision in three fundamental respects.

*First,* the holding of the court of appeals simply cannot be squared with the intended result of the *Bildisco* decision. Failure to recognize the conflict between these decisions can be done only by drawing the absurd presumption that this Court, in authorizing a court to enter orders approving contract rejection, intended compliance with that order to be *strictly* voluntary.

*Second,* the appellate court failed to engage in the proper method of analyzing conflicting bankruptcy and labor law provisions as laid out in the *Bildisco* case. The type of scrutiny engaged in by this Court—placing focus upon the scope of the Bankruptcy Code language, consideration of the sequence in which the bankruptcy and labor laws were enacted and review of the bankruptcy court's purpose under our bankruptcy laws—is totally lacking in the decisions which are the subject of this petition.

*Third,* the appellate court's decision fails to recognize this Court's prior holdings relaxing the Norris-LaGuardia Act's anti-injunction provision where it stands in conflict with other statutory provisions. In presenting that statutory provision as an impregnable barrier to a bankruptcy court's enforcement of its order approving a contract rejection, the appellate court ignores the lead of this Court in refusing to apply that provision where necessary to provide *a remedy* to protect a *statutory right.*

### 1. The Decision Of The Appellate Court Directly Conflicts With The Decision In The *Bildisco* Case As It Would Undercut The Authority Of The Bankruptcy Court Previously Recognized By This Court.

In the *Bildisco* decision, this Court affirmed that a court applying the bankruptcy laws has authority to approve rejection of a collective bargaining agreement as part of a debtor's Chapter 11 reorganization efforts. In this case the court of appeals would strip that court of any means to enforce its approval order.

The limited analysis of the court of appeals fails to address the central problem presented here. Simply put, the end result of the appellate decision cannot be squared either with the holding or with the rationale presented by this Court in the *Bildisco* case. An obvious conflict exists between a decision which recognizes a bankruptcy court's authority *to issue* a particular order and another decision's denial of that same court's authority *to enforce* that same order. It defies logic to conclude that this Court would dedicate the great amount of attention it did to the issue in the *Bildisco* case if the authority given the bankruptcy court in that case was merely intended as a paper exercise. Yet this illogical conclusion is the only one to be drawn from the appellate court's action.

The action taken by the unions which Briggs seeks to enjoin constitutes an unveiled attempt to frustrate the action ordered by the bankruptcy court. The disruption of Briggs' business by the unions has occurred only after the court order and only after Briggs refused to back away from the action authorized by the bankruptcy court. By their actions, the unions have thrown down the gauntlet

to show they have no intention of tolerating the action taken by the bankruptcy court.

Briggs submits that the retaliatory action taken by the unions in this case may be predictable but it is not tolerable. In *Bildisco,* the right to approve rejection of a collective bargaining agreement was recognized to be within the authority of a bankruptcy court if necessary to keep a Chapter 11 company in business. This Court made it clear that the bankruptcy court should take this action only after a finding that the employer and employees *are unable* to reach an accord on revised employment terms and conditions. Absent such agreement, it is virtually preordained that the debtor's employees will not agree with the action taken by the bankruptcy court. The reason a bankruptcy court approves a contract rejection is that the reorganized company cannot survive without lower labor costs. Absent a voluntary compliance with the approval order, the unions may resort to a disruption of the company's operations in an attempt to nullify the court order. If this occurs, the hands of the bankruptcy court are tied under the appellate court ruling. Either the debtor company will fail because its labor costs are too high or the company will fail because the unions will be free to disrupt the operations of any company where a bankruptcy court has approved rejection of existing collective bargaining agreements. Either way the rehabilitation purposes of the Bankruptcy Code will have been thwarted.

If the bankruptcy court is barred from having any equitable remedy by which to address the unions' action, it is impossible to understand the point of what this Court approved in the *Bildisco* case. The authority given the bankruptcy court in that case was designed to provide the court

with a necessary prop to use in maintaining the competitive viability of the debtor company. If a union, disgruntled with that order, can take unchecked alternative action to threaten those continued operations, the bankruptcy court order in the end would have served the opposite purpose from that which was intended.

The appellate court attempts to circumvent this question by asserting that other relief would be available to Briggs. As support, the court of appeals cites this Court's decision in *Sears, Roebuck & Co. v. San Diego County District Council of Carpenters,* 436 U.S. 180 (1978 and *NLRB v. Mackay Radio & Telegraph Co.,* 304 U.S. 333 (1938). These cases refer to possible action available to an employer such as hiring other employees during a strike or bringing tort suits against unlawful union conduct.

The appellate court's point, however, fails to eliminate the resulting conflict for two reasons. First, the issue presented here by Briggs addresses the *authority of the bankruptcy court to enforce its own order.* As recognized in the *Bildisco* decision, it is the role of the bankruptcy court to balance the interests of the affected parties—the debtor, creditors and employees—to determine what course would best promote successful rehabilitation of the debtor. Where one of the affected parties has taken action to nullify the bankruptcy court's order which attempts to facilitate a debtor's rehabilitation, the appellate court would have the bankruptcy court abdicate the role described by the Supreme Court. The appellate court's suggestion that the bankruptcy court should assume a posture of mere observer while the debtor and employees resort to internecine skirmishing in the form of tortious court actions is the antithesis of the harmonious role the bankruptcy court was intended to foster.

Second, the reasoning of the appeals court that *some possible remedy* might be available to a generic type of employer facing a strike fails to recognize the inadequacy of that remedy in addressing the particular situation faced by a debtor-in-possession. By the citations contained in its decision, the appeals court suggests that tortious interference claims possibly could be pursued by Briggs. *See, Sears, Roebuck & Co. v. San Diego County District Council of Carpenters, supra.* Even if the elements to sustain such an action were present, pursuit of a tortious action against the unions would in no way address the immediate need of the debtor-in-possession for short term protections to allow it the ability to conduct its operations during the rehabilitation period. What should be obvious is that if a debtor-in-possession cannot effectively continue its present operations, it will make little difference what the likely outcome of a protracted tort case would have been [1] In short, the suggested remedies of the appellate court are not adequate for the particular needs of Briggs in this case. Reference to those potential remedies does nothing to satisfy the gaping hole created by the appellate court in denying any equitable means to enforce the authority of the bankruptcy court recognized in the *Bildisco* decision.

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[1]Similiarly, the appellate court provides no ready relief by referring to *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938). In the *Mackay* case, this Court recognized an employer's right to hire replacement workers for those on strike. Again, Briggs emphasizes that it does not question the union's right to strike. Rather, Briggs seeks injunctive relief to protect its employees *currently working* — both those who did not strike or those who might have been hired since the strike began — from harassment so that Briggs' operations can continue to function.

### 2. This Petition Should Be Granted As The Method Used By The Appellate Court In Analyzing The Interplay Between The Bankruptcy And Labor Laws Conflicts With That Applied By This Court In The *Bildisco* Case.

Along with the obvious conflict between the end results of the *Bildisco* case and that now before this Court, Briggs submits as a second basis for its Petition the failure of the appellate court to consider the factors identified by this Court as relevant in harmonizing the provisions of the bankruptcy and labor laws. In the *Bildisco* case. this Court set forth the relevant considerations in reviewing the interplay between the bankruptcy and labor law provisions. The appellate court decision applies a sharply different standard of statutory interpretation which cannot be harmonized with that applied by this Court in the *Bildisco* case.

The method of analysis contained in the *Bildisco* decision and that rendered by the court of appeals stand in sharp contrast. In *Bildisco,* this Court considered the scope of the language adopted in the Bankruptcy Code and found that the express language used in the Code covered that contained in the National Labor Relations Act, which had been enacted earlier. This Court also considered the policy underlying the Bankruptcy Code in determining how far the bankruptcy court's authority should be extended. That decision evidences no concern on the part of this Court with the failure of Congress, in its adoption of the Bankruptcy Code, to specifically mention the National Labor Relations Act.

In contrast, the appellate court appears to impose a requirement that mention be contained in the bankruptcy

laws or in its legislative history of a specific intent to lift the jurisdictional restrictions of the Norris-LaGuardia Act. The court of appeals further failed to consider the policies underlying the Bankruptcy Code and instead focused solely upon the legislative purposes prompting enactment of the Norris-LaGuardia Act.

The appellate court's consideration of the bankruptcy and labor law provisions is flawed in two respects:

> (1) the appellate court failed to focus upon whether the language contained in the Bankruptcy Code, given its ordinary meaning, would authorize the bankruptcy court to adopt equitable relief; and
>
> (2) the appellate court failed to consider whether recognition of injunctive remedial authority by the bankruptcy court would further the policies underlying the Bankruptcy Code.

In *Bildisco,* this Court found the bankruptcy court had authority to approve rejection of a collective bargaining agreement due to the express language in 11 U.S.C. §365 giving authority for the rejection of "any executory contract". As this Court stated:

> This language by its terms includes all executory contracts except those expressly exempted, and it is not disputed by the parties that an unexpired collective bargaining agreement is an executory contract.

79 L.Ed. 2d at 492-493.

This Court found no specific mention in the bankruptcy legislation or the legislative history that Congress specifically intended to cover collective bargaining agreements which are the subject of the National Labor Relations Act

("NLRA"). Instead, this Court properly assumed that Congress was aware of the existing law at the time it adopted the comprehensive language of the Bankruptcy Code. Since adoption of the Bankruptcy Code followed that of the NLRA, since the express language Congress used ("executory language") was broad enough to include collective bargaining agreements and since Congress failed to *exclude* such agreements from the Bankruptcy Code provisions, this Court found the right of the bankruptcy court to reject contracts extended to those covered by the National Labor Relations Act.

If engaged in by the appellate court, the same type of analysis would have produced a consistent result in the present case. The Bankruptcy Code specifies:

> (a) The bankruptcy court may issue *any order, process or judgment* that is necessary or appropriate to carry out the provisions of this title. (Emphasis added.)[2]

11 U.S.C. §105. The broad language of this provision would include injunctive relief directed at labor union actions which are covered by the Norris-LaGuardia Act. As in *Bildisco*, one must presume Congress was aware of those statutes which would be affected when the Bankruptcy Code was adopted. The proper focus should not be upon the failure of Congress to specifically mention the Norris-LaGuar-

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[2]This provision, adopted in the Bankruptcy Reform Act of 1978, was not intended to be a *limitation* of the bankruptcy court authority, but rather *expanded* the authority of the bankruptcy court from that previously accorded the bankruptcy judge. *See* S. Rep. No. 95-989, 95th Cong., 2d Sess. at 29 (1978) reprinted in 1978 U.S. Code Cong. & Admin. News at 5815. Further, the House Judiciary Committee Report accompanying that legislation specifically identified as a purpose of the legislation an expansion of the bankruptcy court's jurisdiction in framing remedies. *See* H.Rep. No. 95-959, 95th Cong., 2d Sess. at 52 (1978), reprinted in 1978 U.S. Code Cong. & Admin. News at 6013.

dia Act in adopting the Bankruptcy Code. The proper inquiry is the flip side of the coin—whether, in adopting the broad inclusive language of the Bankruptcy Code, Congress evidenced any intent to specifically *exclude* injunctive relief relating to labor dispute matters.

The appeals court's analysis of the interrelationship between the bankruptcy and labor laws also deviates from that sanctioned by this Court because sole focus is given to the policy behind the Norris-LaGuardia Act and the purposes of the Bankruptcy Code are ignored. After considering the purpose of the Norris-LaGuardia Act, the court of appeals concluded, "We would unnecessarily limit those rights by easing the jurisdictional restrictions of the Norris-LaGuardia Act in the present case." Appendix A at 7.

In *Bildisco,* however, this Court acknowledged that its determination "does undermine the policy of the NLRA, for that policy, as we have noted, is to protect the process of labor negotiations, not to impose particular results on the parties." 79 L.Ed.2d at 501. Despite that finding, principal consideration of this Court was given to the policy sought to be achieved by enactment of the bankruptcy laws.

The same policy considerations identified by this Court in *Bildisco* are equally applicable to the present case. As this Court noted in *Bildisco*:

> Determining what would constitute a successful rehabilitation involves balancing the interests of the affected parties—the debtor, creditors and employees. The bankruptcy court must consider the likelihood and consequences of liquidation for the debtor absent rejection, the reduced value of the creditors'

> claims that would follow from affirmance and the hardship that would impose on them, and the impact of rejection on the employees. In striking the balance, the bankruptcy court must consider not only the degree of hardship faced by each party, but also any qualitative differences between the types of hardship each may face.

79 L.Ed.2d at 496. The balancing of interests identified by this Court pertains equally to issuance of injunctive relief as it does to approving rejection of a collective bargaining agreement. Where appropriate, each action taken by the bankruptcy court should further the aim of the Bankruptcy Code—to achieve the success of the reorganization process. The failure of the appellate court to give any consideration to whether the purposes of the Bankruptcy Code would be advanced by its statutory interpretation constitutes solid grounds upon which this Petition should be granted.

### 3. This Petition Should Be Granted As The Decision Of The Appellate Court In Holding Inviolate The Anti-Injunction Provision Of The Norris-LaGuardia Act Conflicts With Prior Decisions Of This Court Relating To That Provision.

This Petition raises an important federal question in contesting the appellate court's finding that the Norris-LaGuardia Act anti-injunction provision bars the action sought by Briggs in this case. The steadfast application of that provision sharply contrasts with prior decisions of this Court which have established that the Norris-LaGuardia anti-injunction provision is not applicable in each and every instance.

This Court previously has found that the Norris-LaGuardia Act policy of non-intervention by federal courts should yield in certain cases. *Boys Market v. Retail Clerks Union, Local 770,* 398 U.S. 236 (1970); *Brotherhood of Railroad Trainmen v. Chicago River & Ind. R. Co.,* 353 U.S. 30 (1957); *Graham v. Brotherhood of Locomotive Firemen and Engineers,* 338 U.S. 232 (1949). In the *Boys Market* case, this Court balanced the anti-injunction provision of the Norris-LaGuardia Act against the binding arbitration provision of the Labor Management Relations Act. This Court found the district court was not precluded from enjoining a strike in breach of its no-strike obligation under its collective bargaining agreement. In so finding, this Court identified three grounds:

1) the purpose of the arbitration procedures would be undercut if there were no immediate, effective remedy to curb the very tactics that arbitration was intended to obviate (398 U.S. at 249);

2) the literal terms of the Norris-LaGuardia Act must be accommodated to the subsequently enacted provisions of the Labor Management Relations Act and the purposes of arbitration (398 U.S. at 250); and

3) the strike enjoined was not the type of situation to which the Norris-LaGuardia Act was responsive (398 U.S. at 250).

In both *Brotherhood of Railroad Trainmen v. Chicago River Ind. R. Co., supra,* and in *Graham v. Brotherhood of Locomotive Firemen and Engineers, supra,* this Court specified that a prime consideration in determining whether the anti-injunction provision should apply is whether, ab-

sent injunctive relief, Congress would have held out an illusory right for which a remedy had been denied.

Briggs submits that the present case meets each of the considerations identified by this Court as relevant in a denial of the applicability of the Norris-LaGuardia Act anti-injunction provision. Absent injunctive relief, the bankruptcy court would be stripped of any means of enforcing its decision approving rejection of a collective bargaining agreement. Without such authority, the purpose sought to be served by a bargaining agreement rejection would be severely undercut and would be detrimental to the success of the Bankruptcy Code's debtor rehabilitation process.

Further, as the Bankruptcy Code was adopted following enactment of the Norris-LaGuardia Act, it is the literal terms of the initial act which should be construed to accommodate the purposes of the Bankruptcy Code. Finally, the situation involved in this case (union activity intended to interfere directly with Briggs' operations so as to scuttle the bankrfuptcy judge's bargaining contract rejection, simply is not the type of activity to which the Norris-LaGuardia Act was intended to protect.

The failure of the appellate court to consider the requisite factors outlined by this Court in determining applicability of the Norris-LaGuardia Act anti-injunction prohibition presents a serious federal question. As the decision of the appellate court stands directly in conflict with the prior decisions of this Court, Briggs urges this Court to grant its Petition.

## CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Dated: August 17, 1984.

Respectfully submitted,

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# APPENDIX A

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## UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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No. 84-5079

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Briggs Transportation Company,

Appellant,

v.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and all of its affiliated unions; Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent); International Association of Machinists and Aerospace Workers, AFL-CIO and all its local unions; and Local Union No. 710 (Chicago) affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

Appellees.

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Appeal from the United States District Court for the District of Minnesota.

Submitted: June 12, 1984
Filed: July 17, 1984

Before Heaney and JOHN R. GIBSON, Circuit Judges, and Hanson,* Senior District Judge.

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*THE HONORABLE WILLIAM C. HANSON, Senior United States District Judge for the Northern and Southern Districts of Iowa, sitting by designation.

HEANEY, Circuit Judge.

Briggs Transportation Company appeals from the district court's[1] denial of a preliminary injunction against the present and future peaceful picketing activities of its employees under the direction of the defendants, various unions representing approximately 300 of Briggs' 400 employees. Briggs asserts that the court was not barred from enjoining such employee and union activities under the restrictions of the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115 (1982), because the company had previously filed bankruptcy under Chapter 11 of the Bankruptcy Code and received an order from the bankruptcy court allowing it to abrogate its collective bargaining contracts with the unions as part of its reorganization efforts. We cannot agree that the abrogation of existing collective bargaining agreements pursuant to a court order in Chapter 11 proceedings, recently upheld in principle by the Supreme Court in *NLRB v. Bildisco & Bildisco,* 79 L.Ed.2d 482, 492-496 (1984), automatically lifts the jurisdictional restrictions placed on federal courts in cases of labor disputes by the Norris-LaGuardia Act. We therefore affirm the judgment of the district court.

Briggs is a motor carrier located in the upper midwest. In 1978, it employed over 2,000 people. Since that time, it has failed to turn an annual profit and has consistently laid off many of its workers. On January 25, 1983, the company filed a petition for reorganization under Chapter 11 of the Bankruptcy Code. At that time, it employed approximately 1,100 people. After filing its bankruptcy petition, Briggs closed thirty-five of its fifty-seven termi-

[1]The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota.

nals and laid off around 800 more employees. It now employs nearly 400 persons, 300 of which are represented by the unions which are defendants in the present action.

Briggs met several times with union representatives in attempts to reduce its obligations under various collective bargaining agreements with the defendants. Briggs proposed a general wage rate of $9.00 an hour, instead of the $13.21 rate it had agreed to in existing labor agreements, along with significant cuts in fringe benefits and changes in important terms of employment. The record reveals a Briggs' estimate that the proposed economic package reflected a thirty-two percent cut in pay alone. Failing to arrive at an agreeable reduction in contract benefits with the unions, Briggs moved the bankruptcy court for authority to abrogate its collective bargaining contracts under 11 U.S.C. § 365(a) (1982) in late August of 1983. The bankruptcy court granted this motion on March 30, 1984.

The company immediately announced a unilateral reduction in wages, benefits, and terms of employment consistent with the aforementioned proposal, effective April 1, 1984. Employee members of the International Brotherhood of Teamsters, one of the defendant unions, began a strike on April 5 and 6, 1984, with pickets stationed at many Briggs terminals. Briggs agreed to postpone the effective date of the proposed changes, and the Teamsters ended the strike. The parties conducted further meetings, but failed to arrive at a negotiated solution.

On April 20, 1984, Briggs filed the present action in the United States District Court for the District of Minnesota The company sought an injunction against union activities which it viewed as interfering with the abrogation

of collective bargaining agreements approved by the bankruptcy court. Specifically, Briggs sought to enjoin the defendants from:

1. Interference or threat of interference with the normal business operations of Briggs Transportation Co.;

2. Picketing or the display of any picket signs within 2000 feet of any terminal, dock facility, or other place of business of Briggs Tranportation Co., its agents, customers, suppliers or vendors;

3. Interference or threat of interference with the intrastate or interstate, local or over-the-road movement of equipment and/or freight of Briggs Transportation Co., its agents or customers, including. but not limited to, vandalizing, tampering, blocking, or following said equipment and/or freight;

4. Interfering or threat of interference with the real or personal property of Briggs Transportation Co. or its agents, customers, employees, suppliers or vendors at any Briggs Transportation Co. terminal or any other dock or business facility of an agent, customer, supplier or vendor. [or]

5. Interfering or threatening to interfere with any employee, agent, customer, supplier or vendor of Briggs Transportation Co. or their families, whether on or off duty, during or after business hours, including, but not limited to, following, threatening, assaulting or harassing, by any means, including the use of the telephone.

On April 22, 1984, the company unilaterally implemented its proposed changes in terms and conditions of employment. The district court heard oral argument on its motion for a preliminary injunction against union retaliation on April 24, 1984.

On April 25, 1984, the court issued its order denying the relief requested. It held that Briggs' requested injunction involved a labor dispute over terms and conditions of employment. *See* 29 U.S.C. § 113(1982). Thus, under the circumstances before it, the court found that the Norris-LaGuardia Act limited its power to issue an injunction. *See id.* § 101. The court rejected Briggs' contention that the issuance of an injunction restricting a union's attempts to resist the abrogation of a collective bargaining agreement was a necessary adjunct to the power of a bankruptcy court to authorize such an abrogation, a power upheld by the Supreme Court in *Bildisco*. Although *Bildisco* did arrive at an accommodation between the Bankruptcy Code and the National Labor Relations Act which subordinated labor contracts to the legitimate reorganization efforts of failing businesses, the district court held that *Bildisco* did not discuss or require a similar subordination of the Norris-LaGuardia Act to the Bankruptcy Code. The court succinctly stated, "[W]hile *Bildisco* may have authorized Briggs to cut its employees' wages * * *, it does not prohibit the employees from complaining." *Briggs Transportation Co. v. International Brotherhood of Teamsters*, Civil File No. 3-84-542, slip op. at 8 (D. Minn. April 25, 1984). Briggs perfected an expedited appeal of the district court's order to this Court.

On appeal, Briggs candidly recognizes that it is asking for relief which would be unavailable to it in the absence

of its Chapter 11 filing and the bankruptcy court's order authorizing the abrogation of its collective bargaining agreements with the unions. Thus, the principal question is whether the logic of the Supreme Court's decision in *Bildisco* requires injunctive relief from legitimate strike activities and peaceful picketing by union members who do not wish to accept the abrogation of their contracts and fail to negotiate new agreements with employers attempting Chapter 11 reorganization, even where such relief would otherwise be beyond the jurisdiction of the district court under the Norris-LaGuardia Act. We agree with the district court that *Bildisco* does not stretch this far, nor should it.

Initially, we note that the parties have cited us to nothing in the Bankruptcy Code or its legislative history indicating a congressional intent to lift the jurisdictional restrictions of the Norris-LaGuardia Act when a debtor receives court approval of the abrogation of a collective bargaining agreement. Other circuits have expressly held that the automatic stay provisions of the bankruptcy laws did not implicitly alter jurisdictional limits with regard to labor disputes imposed by the Norris-LaGuardia Act. *Crowe & Associates, Inc. v. Bricklayers & Masons Union Local No. 2*, 713 F.2d 211, 214-215 (6th Cir. 1983) (per curiam); *Petrusch v. Teamsters Local 317*, 667 F.2d 297, 299-300 (2d Cir. 1981) (per curiam), *cert. denied*, 456 U.S. 974 (1982). In the same manner, we are convinced that Congress would not have silently repealed the Act to the extent that collective bargaining agreements may be rejected in a Chapter 11 proceeding under 11 U.S.C. § 365(a) (1982).

Neither does the *Bildisco* case mandate the result urged

upon us by Briggs. The *Bildisco* Court simply held that a bankruptcy court may approve the rejection of a collective bargaining agreement as part of a debtor's Chapter 11 reorganization efforts upon an appropriate showing, and that a debtor does not commit an unfair labor practice by modifying or terminating part of such an agreement after filing bankruptcy but prior to a court order authorizing rejection of the agreement. *NLRB v. Bildisco & Bildisco, supra,* 79 L.Ed.2d at 489. The Court did not discuss the Norris-LaGuardia Act, nor did it imply that the Act should in effect be repealed in cases such as the one here before us.

The Norris-LaGuardia Act was designed in large measure to prevent federal courts from enjoining the legitimate exercise of the rights of American workers created and protected by the National Labor Relations Act We would unnecessarily limit those rights by easing the jurisdictional restrictions of the Norris-LaGuardia Act in the present case.

We note two important factors which support our affirmance of the district court herein: First, to the extent that the nature or conduct of the unions' activities violates provisions of state or federal law, relief from such activities may be available to Briggs under established statutory and case law in the same measure as given to other employers. *See Sears, Roebuck & Co. v. San Diego County District Council of Carpenters,* 436 U.S. 180, 194-197, 204 (1978), and cases cited therein; *San Diego Building Trades Council v. Garmon,* 359 U.S. 236, 243-244 & n.2 (1959), and cases cited therein; 29 U.S.C. § 107 (1982). Second, any Briggs' employees who strike out of dissatisfaction with Briggs' wages, benefits, and terms of em-

ployment may be considered economic strikers, and Briggs retains the right to respond in any legal manner to continue its operations. *See NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345-346 (1938).

For the foregoing reasons, we affirm the district court's judgment refusing to enjoin the peaceful collective activities of Briggs' employees and their elected representatives.

A true copy.

Attest:
CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

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## APPENDIX B

### ORDER

Civil File No. 3-84-542

A hearing was held before the undersigned on April 24, 1984 upon plaintiff's request for a preliminary injunction. Steven P. Weiner, Esq., James A. Rubenstein, Esq., and Joe A. Walters, Esq., appeared on behalf of plaintiff. Richard Miller, Esq., appeared on behalf of International Association of Machinists and AeroSpace Workers. Scott D. Soldon, Esq., appeared on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Plaintiff Briggs Transportation Company is a motor carrier located in the upper midwest and defendants are various unions with contracts with Briggs. On January 25, 1983 Briggs filed a Chapter 11 petition under the Bank-

ruptcy Code. As part of its reorganization, Briggs attempted to reject its collective bargaining agreement with the defendants Following the Supreme Court's ruling in *NLRB v. Bildisco and Bildisco,* —— U.S. ——, 104 S. Ct. 1188 (1984), the Bankruptcy Court entered an order on March 30, 1984 approving Briggs rejection of its collective bargaining agreements.

Briggs immediately notified its employees of new wage schedules to be effective April 1, 1984. In response, the International Brotherhood of Teamsters struck Briggs on April 5 and 6, 1984. Briggs then decided to temporarily withdraw its new wage schedules and the IBI members returned to work. Briggs now seeks to institute the new wage schedules it announced on April 1, 1984. Anticipating that the defendants will strike, Briggs filed this action in federal district court seeking an injunction preventing the defendants from engaging in a series of strike related activities designed to disrupt its normal business operations.[1]

The threshold issue involved in this action is whether the Norris-LaGuardia Act limits this court's power to issue an injunction. 29 U.S.C. § 101 states in part that:

> No *court* of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a *labor dispute,* except in strict conformity with the provisions of this Act....

*Id.* There is no question that a Federal District Court is a "court" within the meaning of 29 U.S.C. § 101. *See* 29

[1]The specific relief requested by Briggs is set out in the appendix to this opinion.

U.S.C. § 113(d) ("the term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress...."). The next issue is whether the present controversy grows out of a "labor dispute" within the meaning of 29 U.S.C. § 101.

The term "labor dispute" is defined in 29 U.S.C. § 113(c) as:

> Any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment....

The Supreme Court has recognized that the term "labor dispute" must be given a broad definition to effectuate the purposes of the Act. *Bulk Terminals, Inc. v. International Longshoremen's Association*, 102 S.Ct. 2673 (1982). In the present case there can be very little dispute that the action concerns the terms or conditions of employment and hence is a "labor dispute." The very basis of the present action is Briggs' fear that the defendant unions will engage in unlawful picketing activities *after Briggs institutes its reduced wage schedule* in conformity with the Bankruptcy Court's order authorizing a reduction in wages. Nothing could be more central to the employer-employee relationship than the wages and fringe benefits employees will receive for their services. Thus, this court believes that the dispute between Briggs and its unions arises out of a labor dispute within the meaning of the Norris-LaGuardia Act. *See e.g. Matter of Crowe & Associates, Inc.*, 713 F.2d 211 (6th Cir. 1983); *In re Pet-*

*rusch*, 667 F.2d 297 (2d Cir. 1981), *cert. denied*, 456 U.S. 974 (1981).

Since the present case arises out of a labor dispute the court must follow the procedural requirements set forth in the Norris-LaGuardia Act. The principal operative provisions of the Norris-LaGuardia Act governing the issuance of injunctions are 29 U.S.C. §§ 104, 105 and 107. Section 104 sets forth a series of activities which a federal court may not, under any circumstances, enjoin. Section 105 prohibits a federal court from issuing any injunction on the ground that persons involved in a labor dispute are engaged in an unlawful combination or conspiracy Unlike §§ 104 and 105, § 107 specifically contemplates that a federal court may issue an injunction prohibiting certain activity, generally limited to unlawful conduct. However, § 107 goes on to list a series of procedural and substantive requirements *which must be rigidly complied with* before a court issues an injunction. It is unnecessary for this court to analyze the requirements of § 107 in detail since it is apparent that Briggs has failed to meet those requirements.

The central theme of Briggs' argument is that this Court must balance the competing policies of the Bankruptcy Code and the Norris-LaGuardia Act in determining whether to issue an injunction. Specifically, Briggs asserts that Rule 65 of the Federal Rules of Civil Procedure and the Supreme Court's recent decision in *NLRB v. Bildisco and Bildisco*, —— U.S. ——, 104 S.Ct. 1188 (1984) authorize this court to enjoin the defendants. For several reasons, this court cannot accept Briggs' contention.

Fule 65(e) of the Federal Rules of Civil Procedure provides in part that:

> These rules do not modify any statute of the United States relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee....

*Id.* The provision cited above lends further support to this court's conclusion that it is bound by the provisions of the Norris-LaGuardia Act in issuing an injunction.

In *NLRB v. Bildisco and Bildisco*, —— U.S. ——, 104 S.Ct. 1188 (1984), the United States Supreme Court held (1) that a debtor-in-possession could reject a collective bargaining agreement with a union, and (2) a debtor-in-possession did not commit an unfair labor practice by unilaterally rejecting a collective bargaining agreement. *Id.* at 1191-92. The basis of the Court's decision that a debtor-in-possession could reject a collective bargaining agreement was the language of 11 U.S.C. § 365(a) which permits a trustee, subject to court approval, to "assume or reject any executory contract or unexpired lease of the debtor." *Id.* The Supreme Court found that a collective bargaining agreement was an "executory contract" and that there was no exception in the Code for collective bargaining agreements. Thus, based upon the language of the statute, the Supreme Court permitted the debtor-in-possession to reject its collective bargaining agreement.[2]

*Bildisco* involved a relatively narrow issue and an interpretation of an entirely different statute (the National

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[2]The order permitting Briggs to reject their collective bargaining agreement was based upon the Supreme Court's decision in *Bildisco*. This court does not quarrel with the Court's holding in *Bildisco* or the Bankruptcy Court's order permitting Briggs to reject its collective bargaining agreement. That order is presently before this court on appeal from the Bankruptcy Court and this court expresses no opinion on the merits of the appeal.

Labor Relations Act) than the present action. The Supreme Court in *Bildisco* never even referred to the Norris-LaGuardia Act. This court is not persuaded by Briggs' contention that *Bildisco* signals a radical shift in the relationship between the Bankruptcy Code and the Norris-LaGuardia Act. The appropriate balance between the competing policies of the Bankruptcy Code and the Norris-LaGuardia Act and this court is in no position to change that result.

Briggs argues that the present controversy arises out of a bankruptcy proceeding and hence is not a labor dispute. While it is true that this action arising out of a bankruptcy proceeding for purposes of 28 U.S.C. § 1471 which vests jurisdiction in actions arising under or related to cases under Title 11 in the district courts, that does not mean that a district court may ignore the provisions of the Norris-LaGuardia Act. To ignore the Norris-LaGuardia Act would require this court to conclude that Congress impliedly repealed the Norris-LaGuardia Act in cases involving a debtor in the process of reorganization. The court is unwilling to believe that Congress would have taken such a drastic step in such a silent fashion. *See e.g. Matter of Crowe & Associates, Inc.*, 713 F.2d 211 (6th Cir. 1983) (Holding that Congress did not repeal Norris-LaGuardia Act by adopting automatic stay provision of Bankruptcy Code).

Briggs also argues that 28 U.S.C. § 147(b) itself gives the district court jurisdiction to issue the present injunction without complying with the Norris-LaGuardia Act. Section 147(b) provides that:

> Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than

> the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under Title 11 or arising in or related to cases under Title 11.

Briggs argues that if the Norris-LaGuardia Act took the jurisdiction to enjoin activities related to a labor dispute away from the federal courts, the various state courts acquired that jurisdiction. Briggs goes on to argue that notwithstanding that fact, § 1471(b) gave the jurisdiction taken away by the Norris-LaGuardia Act back to the district courts. The fallacy in this argument is that § 1471(b) only concerns Acts of *Congress* that *confer exclusive* jurisdiction on a court other than the district court. There is no Act of Congress conferring exclusive jurisdiction over the subject of labor-related injunctions upon state courts. Thus, this argument must be rejected.

Finally, Briggs asserts that to deny it an injunction is to render the Bankruptcy Court's order authorizing rejection of its collective bargaining agreement meaningless since it cannot successfully operate unless the picketers are kept far enough away to give it "breathing space."[3] While it is true that this court has the authority to issue an injunction in aid of a Bankruptcy Court's order, when such an injunction is requested in the context of a labor dispute the court must abide by the Norris-LaGuardia Act. Moreover, the argument that Briggs may go out of business absent the requested injunction is no more than a recognition that one of the unfortunate side effects of labor-management strife is economic loss to the employers

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[3]The "breathing space" requested is an order keeping picketers *2000* feet from Briggs' property. Even assuming the Norris-LaGuardia Act did not apply, there would be serious First Amendment problems in issuing such an order.

and employees. The labor laws have been designed to create a structural framework for dealing with labor disputes but not to prohibit a union from utilizing its power of persuasion by way of peaceful picketing. Thus, while *Bildisco* may have authorized Briggs to cut its employees' wages by $3 per hour, it does not prohibit the employees from complaining.

Since the provisions of the Norris-LaGuardia Act apply to the present action, Briggs must abide by the provisions of 29 U.S.C. § 107 in seeking an injunction. Briggs has clearly failed to meet these requirements.

ACCORDINGLY, IT IS ORDERED that:

1. Plaintiff's request for a preliminary injunction is denied in all respects.

Dated: April 5, 1984.

/s/ Paul A. Magnuson
United States District Judge

APPENDIX

Specifically, Briggs seeks an injunction:

> restraining defendants, their affiliated unions, their officers, agents, servants, employees and attorneys and those persons in active concert or in participation with them who shall receive actual notice of this order by personal service or otherwise from engaging in any of the following conduct:
>
> 1. Interference or threat of interference with the normal business operations of Briggs Transportation Co.

2. Picketing or the display of any picket signs within 2000 feet of any terminal, dock facility, or other place of business of Briggs Transportation Co, its agents, customers, suppliers or vendors;

3. Interference or threat of interference with the intrastate or interstate, local or over-the-road movement of equipment and/or freight of Briggs Transportation Co., its agents or customers, including, but not limited to, vandalizing, tampering, blocking, or following said equipment and/or freight.

4. Interfering or threat of interference with the real or personal property of Briggs Transportation Co. or its agents, customers, employees, suppliers or vendors at any Briggs Transportation Co. terminal or any other dock or business facility of an agent, customer, supplier or vendor.

5. Interfering or threatening to interfere with any employee, agent, customer, supplier or vendor of Briggs Transportation Co. or their families, whether on or off duty, during or after business hours, including, but not limited to, following, threatening, assaulting or harassing. by any means, including the use of the telephone.

Office - Supreme Court, U.S.
FILED
SEP 27 1984
ALEXANDER L. STEVAS
CLERK

No. 84-296

IN THE
# Supreme Court of the United States

OCTOBER TERM, 1984

BRIGGS TRANSPORTATION COMPANY,
*Petitioner,*

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and all of its affiliated unions; CHICAGO TRUCK DRIVERS, HELPERS AND WAREHOUSE WORKERS UNION (INDEPENDENT); INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO and all of its local unions; and LOCAL UNION NO. 710 (CHICAGO) affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
*Respondents.*

On Petition For A Writ Of Certiorari To The United States Court of Appeals for the Eighth Circuit

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Contrary to Petitioner, Respondents believe that this case presents only the following issue:

May a court of the United States, consistent with the Norris-LaGuardia Act, enjoin a union's members from engaging in peaceful picketing, patrolling, speech and other forms of publicity designed to protest their employer's unilateral cuts in wages, fringe benefits and other terms and conditions of employment following a bankruptcy court's rejection of a collective bargaining agreement to which the employer was signatory?

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*Respondents.*

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On Petition For A Writ Of Certiorari To The
United States Court of Appeals for the Eighth Circuit

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

### OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 739 F.2d 341 (8th Cir. 1984). The opinion of the district court is not yet officially reported.

### JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on July 17, 1984. The Petition for a Writ of Certiorari was filed on August 24, 1984. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

## STATUTES INVOLVED

**29 U.S.C. §101**

**Issuance of restraining orders and injunctions; limitation; public policy**

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

**29 U.S.C. §104**

**Enumeration of specific acts not subject to restraining orders or injunctions**

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

* * *

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peacably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

**29 U.S.C. §113**

When used in this chapter, and for the purposes of this chapter—

* * *

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

**11 U.S.C. §105**

(a) The Bankruptcy Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this Title.

## STATEMENT OF THE CASE

### I. Nature of the Case

Briggs Transportation Co. ("Briggs") is a bankrupt trucking company which filed a Chapter 11 petition in reorganization on January 25, 1983. Approximately 300 of Briggs 400 employees are union members, the bulk being Teamster members employed pursuant to the terms of the National Master Freight Agreement and applicable Supplemental Agreements.

On March 30, 1984, the United States Bankruptcy Court for the District of Minnesota rejected labor agreements to which Briggs was signatory, including the National Master Freight Agreement. The very next day, Briggs unilaterally slashed wages and fringe benefits of its unionized employees by more than $4.00 per hour and imposed far less favorable non-monetary terms and conditions of employment upon the workers.

Several days later, the International Brotherhood of Teamsters ("Teamsters Union" or "Union") authorized a strike against Briggs to protest those unilateral slashes. Peaceful, primary picket lines were established at every Briggs terminal. When Briggs requested negotiations, the Teamsters Union terminated the strike.

The negotiations were unsuccessful. Briggs then brought this action, seeking to enjoin an anticipated strike and, *inter alia,* any "interference or threat of interference with the normal business operations of Briggs Transportation Co."

United States District Judge Paul Magnuson conducted a hearing on Briggs' request for a temporary injunction on April 24, 1984. Judge Magnuson did not permit oral testimony but, on April 25, 1984, rejected Briggs' request for a preliminary injunction in all respects. Judge Magnuson found that Briggs' request involved a "labor dispute" within the meaning of the Norris-LaGuardia Act, 29 U.S.C. §§101-115 (1982), and that nothing in the legislative history of the Bankruptcy Reform Act of 1978 indicated that, by its passage, the Congress had impliedly repealed the provisions of the Norris-LaGuardia Act which deprive federal courts of jurisdiction to issue injunctions against peaceful picketing and concerted activity arising out of a "labor dispute".[1]

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[1] App. A-13. "App." refers to appendix to the petition for certiorari.

Briggs perfected an expedited appeal to the United States Court of Appeals for the Eighth Circuit which, on July 17, 1984, affirmed the district court's judgment in all respects. The court explicitly noted that nothing in the Bankruptcy Code, its legislative history, or the decisions of other circuit courts of appeals indicated any intention to void the plain language of the Norris-LaGuardia Act. Finally, the court of appeals found that this Court's *Bildisco*[2] decision was inapposite since it did not discuss the Norris-LaGuardia Act and could not be read to imply the repeal of that Act in bankruptcy cases. (739 F.2d at 343-344) Therefore, the court of appeals refused to enjoin the peaceful collective activities of Briggs' employees and their unions.

**II. The Pertinent Facts**

Briggs is a trucking company engaged in both interstate and intrastate transportation of motor freight. The International Brotherhood of Teamsters and its affiliated local unions represent the majority of the approximately 300 of Briggs employees who are organized. Nearly all were covered by the National Master Freight Agreement and applicable Supplemental Agreements which were due to expire in 1985.

In August of 1983, Briggs proposed massive cuts in wages, fringe benefits, and other terms and conditions of employment for Teamster members. Briggs sought to slash the wages of its employees by more than $4.00 per hour, to inflict additional cuts in fringe benefits, such as vacations, sick leave, and personal holidays, and to eliminate many other terms and conditions of employment under the union contract, including some

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[2] *N.L.R.B. v. Bildisco & Bildisco*, ____U.S.____, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1983).

of its crucial, non-monetary provisions, such as seniority.[3] When Union leaders rejected Briggs' proposals, Briggs filed a motion to reject its collective bargaining agreements in the bankruptcy court.

On March 30, 1984, Bankruptcy Judge Robert J. Kressel approved rejection of the contracts. Briggs immediately unilaterally slashed its employees' wages, fringe benefits and working conditions to the level which it had unsuccessfully sought in August of 1983. The Teamsters Union responded by calling a strike which shut down Briggs' operations by peaceful picketing activities. There were no arrests or violent activities.[4] When Briggs agreed to postpone those unilateral slashes in pay and fringe benefits pending negotiations, the Union returned its members to work.

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[3] TR 31-32. At the April 24 hearing, Judge Magnuson did not permit oral testimony. Instead, due to the nature of the issues in the case, the court informed counsel for the Teamsters Union that his representations as to factual matters would be considered "taken [ ] to be true and I think the record should indicate that, that the Court is just accepting your offer of proof..." TR 64. Counsel for Briggs did not object to this procedure. No more formal offer of proof was needed. See, e.g., *Harris v. Smith,* 372 F.2d 806, 815 (8th Cir. 1967); *Movie Systems, Inc. v. MAD Minneapolis Audio Distributors,* 717 F.2d 427, 431-432 (8th Cir. 1983). Therefore, we shall refer to various portions of the transcript of the oral argument in the presentation of the facts.

[4] Briggs did not claim that any arrests had been made or that the local authorities could not control the picketing and other forms of publicity. See 29 U.S.C. §107(c). Briggs' moving papers identified only one allegedly violent action, which the Teamsters Union vigorously disputed (TR 31). ("TR" refers to the transcript of the oral argument before Judge Magnuson.) Briggs' counsel also disowned any claim that the St. Paul terminal had, as stated in its complaint, been "barricaded" (TR 25).

There is no record evidence of further "harassment". As the court of appeals noted, Briggs "candidly recognizes" that it does not meet the Norris-LaGuardia Act's stringent test for injunctive relief. 739 F.2d at 343. What Briggs really seeks is to enjoin peaceful concerted activity.

On April 12, 1984, Briggs met with Union leaders but remained inflexible. Although the Teamsters Union made various proposals which would have altered the pay to its members by several dollars per hour, Briggs stubbornly insisted upon its unilaterally imposed terms and conditions of employment. At the end of the meeting, the Union offered to meet again if Briggs wished to negotiate or deviate from its original proposal.[5] Briggs responded by filing this lawsuit for an injunction against any "interference or threat of interference" with Briggs, its employees, customers, suppliers and others.

## REASONS FOR DENYING THE WRIT

### I. Summary of Argument

This lawsuit involves a "labor dispute" within the meaning of the Norris-LaGuardia Act, 29 U.S.C. §113(c), since it involves a "controversy concerning terms or conditions of employment". Every federal court which has considered the issue has held that the Norris-LaGuardia Act deprives federal courts of jurisdiction to enter injunctions restraining peaceful picketing and publicity against bankrupt employers. Every federal court wnich has considered the issue has held that the Bankruptcy Reform Act of 1978 did not, based upon a detailed examination of its legislative history, change the application of the Norris-LaGuardia Act to this case and authorize such injunctive relief. Finally, this Court's *Bildisco* decision is inapposite because it construed a different federal statute and did not concern the Norris-LaGuardia Act.

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[5] TR 31-32.

## II. Neither the Decision Nor the Record Below Raises the Question Presented in the Petition.

Petitioner's statement of the Question Presented is designed to erect and demolish a strawman which will divert the Court's attention from the real nature of this case. This case does not involve union activity "which has been undertaken to nullify [a] bankruptcy court's prior order."[6] Nor does it involve activity which constitutes any unlawful interference with Briggs' business operations, by way of violence or otherwise. Rather, as the court of appeals explicity noted, this case involves a refusal "to enjoin the peaceful collective activities of Briggs' employees and their elected representatives", 739 F.2d at 344; and, as the court of appeals also explicity noted, "Briggs candidly recognizes that it is asking for relief which would be unavailable to it in the absence of its Chapter 11 filing and the Bankruptcy Court's Order authorizing the abrogation of its collective bargaining agreements with the Union." 739 F.2d at 343. In the words of the Eighth Circuit,

> "The principal question is whether the logic of the Supreme Court's decision in *Bildisco* requires injunctive relief from legitimate strike activities and peaceful picketing by Union members who do not wish to accept the abrogation of their contracts and fail to negotiate new agreements with employers attempting Chapter 11 reorganization, even where such relief would otherwise be beyond the jurisdiction of the District Court under the Norris-LaGuardia Act." *Id.*

In other words, the plain language of the Norris-LaGuardia Act governs this case and nothing in the case law or the legislative history compels a contrary result or a departure from that Act's literal mandate.

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[6] Petition for Certiorari, Question Presented.

## III. The Court of Appeals Correctly Held that the Norris-LaGuardia Act Deprived the Courts of the United States of Jurisdiction to Enjoin the Union's Purely Peaceful Activity.

The Norris-LaGuardia Act defines the term "labor dispute" to include "any controversy concerning terms or conditions of employment..." 29 U.S.C. §113(c). This Court has recently recognized the fact that this "statutory definition itself is extremely broad" and that the Act itself was designed to prevent federal judges from becoming involved in "the very scrutiny of 'legitimate objectives' that Congress intended to prevent when it passed the Act." *Jacksonville Bulk Terminals v. International Longshoremen's Association,* 457 U.S. 702, 712, 719-720 (1982) (footnotes omitted). By passage of the Norris-LaGuardia Act, "Congress was intent upon taking the federal courts out of the labor injunction business..." *Columbia River Packers Association v. Hinton,* 315 U.S. 143, 147 (1942.[7]

Every court of appeals which has considered the issue has decided that a case involving picketing against bankrupt employers arises out of a "labor dispute" within the meaning of Norris-LaGuardia. See, *In re Crowe & Associates, Inc.,* 713 F.2d 211, 213 (6th Cir. 1983) (strike to collect pre-petition delinquencies to fringe benefit funds involves a labor dispute under Norris-LaGuardia); *In re Petrusch,* 667 F.2d 297, 299 (2d Cir. 1981), *cert. denied* 456 U.S. 974 (1982) (strike to collect pre-petition debts to fringe benefit funds "fits squarely into the Norris-LaGuardia Act's definition of labor dispute"); *In re Third Avenue Transit Corp.,* 192 F.2d 971, 973 (2d Cir. 1951) (strike to compel debtor to sign union contract involves labor dispute under Norris-LaGuardia).

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[7] Accord, e.g., *Marine Cooks & Stewards v. Panama S.S. Co.,* 362 U.S. 365, 369 (1960).

Under the Norris-LaGuardia Act, numerous federal courts have held that they lack jurisdiction to issue injunctions restraining peaceful picketing against bankrupt employers. *In re Crowe & Associates, Inc., supra; In re Petrusch, supra; In Re Third Avenue Transit Corp., supra; Truck Drivers Local Union No. 807 v. Bohack Corp.*, 541 F.2d 312, 317 (2d Cir. 1976), *cert. denied* 439 U.S. 825 (1978) (strike to compel debtor to abide by collective bargaining agreement may not be enjoined under Norris-LaGuardia Act); *International Brotherhood of Teamsters v. Quick-Charge, Inc.*, 168 F.2d 513 (10th Cir. 1948) (Norris-LaGuardia prohibits injunction against strike to publicize and protest alleged unfair labor practices of the debtor); *Anderson v. Bigelow*, 130 F.2d 460 (9th Cir.), *cert. denied* 317 U.S. 690 (1942) (Norris-LaGuardia prohibits injunction against strike to compel federal receiver to sign contract); *N.L.R.B. v. Brada Miller Freight Systems, Inc.*, ____ F.Supp. ____, 109 Lab. Rel. Ref. Man. (BNA) 2533, 2536 (N.D.Ala. 1981) (Norris-LaGuardia Act prohibits injunctions against "interfering, in any way, with the operation of the company's business and its normal flow of traffic").[8]

The conclusion that the Norris-LaGuardia Act prohibits the relief requested here is bolstered by the fact that the Bankruptcy Reform Act of 1978 never discussed or in any way implied a change in the federal anti-injunction policy expressed in the Norris-LaGuardia Act. *In re Petrusch*, 667 F.2d 297, 299-300 (2d Cir. 1981), *cert. denied* 456 U.S. 974 (1982); *In re Crowe & Associates, Inc.*, 713 F.2d 211, 214 (6th Cir. 1983); *N.L.R.B. v. Brada Miller Freight Systems, Inc.*, ____ F.Supp. ____, 109

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[8] The fact that the picketing may cause the company's financial collapse does not provide the jurisdiction removed by Norris-LaGuardia, since "the labor laws recognize that a strike may drive an employer out of business." *In re Crowe & Associates, Inc., supra*, 713 F.2d at 216; *accord, In re Petrusch, supra*, 667 F.2d at 297. This Court has also recognized that a union's demands may be more than an employer can pay. See, *United Mine Workers v. Pennington*, 381 U.S. 657, 665 n. 2 (1965).

Lab. Rel. Ref. Man. (BNA) 2533, 2539 (N.D.Ala. 1981); *Truck Drivers Local Union No. 807 v. Bohack Corp.*, 541 F.2d 312, 318 (2d Cir. 1976), *cert. denied* 439 U.S. 825 (1978); *In re Third Avenue Transit Corp.*, 192 F.2d 971, 973 (2d Cir. 1951); *International Brotherhood of Teamsters v. Quick-Charge, Inc.*, 168 F.2d 513, 516 (10th Cir. 1948); *Anderson v. Bigelow*, 130 F.2d 460, 462, 464 (9th Cir.), *cert. denied* 371 U.S. 690 (1942).

Briggs really seeks to have this Court disregard the Norris-LaGuardia Act's plain wording, legislative history and breadth, as well as the consistent interpretations and applications by every court of appeals which has considered the issue.

Finally, this Court's *Bildisco* decision is plainly inapposite since it never cited the Norris-LaGuardia Act; did not discuss the Norris-LaGuardia Act; did not discuss any cases which construed the Norris-LaGuardia Act; did not criticize any of the extensive case law cited in this brief regarding the Norris-LaGuardia Act; accommodated an entirely different statute with a different legislative history; and treated an entirely different subject.

In summary, we respectfully submit that the Eighth Circuit was correct as a matter of law in refusing to overturn the district judge's exercise of discretion in denying the injunction sought here as contrary to the plain language of the Norris-LaGuardia Act. The Eighth Circuit's decision was consistent with decisions of this Court construing the Norris-LaGuardia Act and decisions of every court of appeals which has considered this or a related issue.

## CONCLUSION

This petition presents a case of no great difficulty or novelty. The true issue involved is a very simple one — whether the Norris-LaGuardia Act can be ignored by a federal court absent any facts falling within its specific exceptions. The Eighth Circuit was plainly correct and its decision should stand. Therefore, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

October Term, 1984

No. ———

BRIGGS TRANSPORTATION COMPANY,

*Petitioner,*

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *et al.*,

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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This Brief is submitted on behalf of the Respondents International Association of Machinists and Aerospace Workers, AFL-CIO, and its affiliated local unions (Machinists) made parties defendant and properly served in the proceedings below. The Petitioner seeks a writ of certiorari to review a judgment of the Eighth Circuit Court of Appeals, filed July 17, 1984, which affirmed the District Court's refusal to enjoin a lawful economic strike and picketing engaged in by the International Brotherhood of Teamsters, Chauffeurs, Ware-

housemen and Helpers of America, and certain other named defendants (Teamsters).

It is apparent from the pleadings below, the argument and admissions of counsel for the Briggs Transportation Company (Briggs) that the Machinists have never engaged in, or threatened to engage in any strike or picketing activity. The Petitioner, therefore, seeks approval of a *prospective* injunction against the Machinists. Briggs, however has set forth neither facts nor case law to support its request for a prospective injunction against the Machinists.

## CONCLUSION

Briggs has utterly failed to comply with the provisions of Rule 17 of the Rules of the Supreme Court of the United States with respect to its request that the decision of the Eighth Circuit Court of Appeals to refuse to issue a prospective injunction against the Machinists should be reviewed. The Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit should be denied.

Dated: September 26, 1984.

Respectfully submitted,

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